

**BEFORE the HEARING EXAMINER for the
CITY of SAMMAMISH**

DECISION

FILE NUMBER: PSUB2017-00599

APPLICANT: CR Home Builders, LLC
14410 Bel-Red Road
Bellevue, WA 998007

TYPE OF CASE: Preliminary subdivision (*25th St. Assemblage* ¹)

STAFF RECOMMENDATION: Approve subject to conditions

EXAMINER DECISION: GRANT subject to conditions

DATE OF DECISION: September 17, 2018

INTRODUCTION ²

CR Home Builders, LLC ("CR Builders"), one of the Murray Franklyn family of companies (Testimony), seeks preliminary approval of *25th St. Assemblage*, a 14-lot single-family residential subdivision of a 5.69 acre site which is zoned R-4.

CR Builders filed a Base Land Use Application on July 27, 2017. (Exhibits 5; 6 ³) The Sammamish Department of Community Development ("Department") deemed the application to be complete on August 2, 2017. (Exhibit 7) The Department issued a Notice of Application on August 9, 2017. (Exhibits 7; 8)

The subject property is located at the westerly end of NE 25th Street, approximately 700 feet west of 244th Avenue NE, in the northeast corner of the City.

The Sammamish Hearing Examiner ("Examiner") viewed the subject property on September 5, 2018.

¹ Some documents in the file list the subdivision's name as "*NE 25th Street Assemblage*." The project name used on the proposed preliminary plat is "*25th St. Assemblage*." (Exhibit 2) The Examiner has chosen to use the name as it appears on the proposed preliminary plat.

² Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

³ Exhibit citations are provided for the reader's benefit and indicate: 1) The source of a quote or specific fact; and/or 2) The major document(s) upon which a stated fact is based. While the Examiner considers all relevant documents in the record, typically only major documents are cited. The Examiner's Decision is based upon all documents in the record.

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The Examiner held an open record hearing on September 5, 2018. The Department gave notice of the hearing as required by the Sammamish Municipal Code ("SMC"). (Exhibit 30)

Subsection 20.05.100(1) SMC requires that decisions on preliminary subdivisions be issued within 120 net review days after the application is found to be complete. The open record hearing was held within the allowed review period. (Testimony)

The following exhibits were entered into the hearing record during the hearing:

- Exhibits 1 - 30: As enumerated in Exhibit 1, the Departmental Staff Report
- Exhibit 31: Critical Area Report, Revised March 20, 2018
- Exhibit 32: E-mail comment from Jay DeCoons, May 31, 2018
- Exhibit 33: Letter comment from Wendy Kelling and John Scannell, July 9, 2018
- Exhibit 34: Memorandum comment from John Scannell and Wendy Kelling, July 9, 2018
- Exhibit 35: Applicant responses to Exhibits 32 – 34, August 31, 2018⁴
- Exhibit 36: Applicant's PowerPoint hearing presentation (10 slides), September 5, 2018
- Exhibit 37: Technical memorandum, Wildlife Reconnaissance, Raedeke Associates, Inc., August 31, 2018
- Exhibit 38: Sheet P06 of Exhibit 2 annotated to show trees along and within the NE 25th Street right-of-way

The action taken herein and the requirements, limitations and/or conditions imposed by this decision are, to the best of the Examiner's knowledge or belief, only such as are lawful and within the authority of the Examiner to take pursuant to applicable law and policy.

FINDINGS OF FACT

1. CR Builders proposes to subdivide the approximately 5.69 acre assemblage (the "subject property") into 14 lots for single-family residential development. The subject property is located at the westerly end of NE 25th Street and consists of all of four tax account parcels and a portion of a fifth tax account parcel: Parcels 222506-9099 and 222506-9031 ("Parcel 9099" and "Parcel 9031") lying on the north side of NE 25th Street; Parcels 222506-9020 and 222506-9043 ("Parcel 9020" and "Parcel 9043") lying on the south side of NE 25th Street opposite Parcels 9099 and 9031; and a small portion of Parcel 222506-9074 ("Parcel 9074") abutting the west side of Parcel 9043. (Exhibit 2, Sheet P03)

The subject property does not exist as a legally subdivideable assemblage at this time because the portion of Parcel 9074 which is to be part of the proposed subdivision has not been legally separated from the portion which will not be part of the proposed subdivision. CR Builders and or the current owners of Parcels 9043 and 9074 intend to seek approval of a Boundary Line Adjustment ("BLA") (an application has not yet been filed with the City) to carve out an irregularly shaped portion of the

⁴ Date of response given in testimony.

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northern end of Parcel 9074 and attach it to Parcel 9043. (Testimony) If and when such BLA is approved by the City, the subject property will exist as a legally recognizable assemblage that can be subdivided.

2. The subject property is in a developing area near the northeast corner of the City. The subject property and the surrounding area within the City are zoned R-4; there is an area zoned R-1 some distance to the north. The land across 244th Avenue NE lies in unincorporated King County. (Exhibit 3)
3. The subject property is bordered on the north by a portion of *Gabrielle's Place* with acreage lots to its west. To the north of *Gabrielle's Place* are *Montecino Estates* and *Bradford Place*. All three of those subdivisions have been developed under the provisions of the R-4 zone. Approximately six unplatted and/or short platted lots lie between the subject property and 244th Avenue NE. The subject property is bordered on the south by *Cedar Hill*, a subdivision currently being developed under the R-4 zone, the residual of Parcel 9074, and an open space tract associated with a subdivision to the west. Finally, the subject property is bordered on the west by the residual of Parcel 9074 (which has a residence accessed from the west in its southwest corner) and a large open space tract associated with a subdivision to the west. (Exhibits 2, Sheet P03; 3; 36, Slide 6)
4. NE 25th Street currently exists as a 15' ± wide gravel road within a 50' wide public street right-of-way from 244th Avenue NE westerly to the west line (extended) of Parcel 9043. The street's alignment passes through a horizontal chicane to the north between approximately 180 and 440 feet west of 244th Avenue NE. (Exhibits 2, Sheet P03; 38)
5. The majority of the subject property exhibits a gentle southwesterly slope. A tributary to Evans Creek flows from the southeast to the northwest, cutting across a couple of the southwesterly corners of the subject property. The tributary flows through a steep-sided ravine whose slopes encumber portions of Parcels 9031 and 9074. (Exhibits 2, Sheet P03; 31; 36, Slide 6)

The Evans Creek tributary is a Type F stream. Type F streams must be protected with a 150-foot wide buffer under SMC regulations. (Exhibits 1; 31)

6. The subject property is designated on the City's adopted comprehensive plan R-4 and zoned R-4, residential development at a maximum density of four dwelling units per acre. The maximum permissible lot yield under the subject property's R-4 zoning, calculated in accordance with procedures spelled out in the SMC, is 14.04 or 14. (Exhibits 1; 15)
7. CR Builders proposes to subdivide the subject property into 14 lots for single-family residences⁵ plus approximately 1.5 acres set aside to protect the Evans Creek tributary (Proposed Tracts C and

⁵ CR Builders' original application proposed a 20-lot subdivision. (Exhibit 7, p. 2) The proposed yield was reduced to 14 when the Evans Creek tributary was classified as a Type F stream requiring a 150-foot wide buffer. (Exhibit 36, Slide 3; and testimony)

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E), an approximate half-acre storm water control tract which will also provide a small active recreation area (Proposed Tract B), an approximate 8,000 square foot ("SF") open space/tree retention tract (Proposed Tract A), and a short private road (Proposed Tract D). NE 25th Street within the limits of the proposed subdivision will be constructed to full City standards: 28' of pavement, curb and gutter, bioswales, and 5' concrete sidewalks. NE 25th Street between the subdivision and 244th Avenue NE will be improved to a 20-foot wide paved surface as required by the 2016 Public Works Standards ("2016 PWS"). A new 60-foot wide right-of-way (variously labelled "ROW 1" and "Road A" – "Road B") will be dedicated between NE 25th Street and the north plat boundary; a public street will be constructed within that right-of-way. (Exhibit 2)

8. All proposed lots meet applicable zoning standards. (Exhibit 1)
9. ROW 1 (containing Road A/B) will abut *Gabrielle's Place*. CR Builders was the developer of record for *Gabrielle's Place*. (Official Notice: Examiner Decision, May 26, 2016, PSUB2015-00104, p. 1) Four different plat designs were considered during the public hearings on *Gabrielle's Place*. The two considered during the last public hearing were called Option A and Option B. Both Option A and Option B proposed creation of Tracts A and F. Tract A in *Gabrielle's Place* contains the subdivision's stormwater control facilities; Tract F extends westerly along the south property line from the cul-de-sac bulb and ends at the southeast corner of Tract A. An easement was to encumber the southern portion of Tract A to provide access residences outside the plat to the west. (Exhibit 2, Sheet P03; official notice: Examiner Decision, May 26, 2016, PSUB2015-00104) The Examiner described the function of those tracts in his May 26, 2016, Decision granting preliminary subdivision approval for Option A of *Gabrielle's Place*:

In Option A (Exhibit 31A), [the] public street [in the plat] would be a [southerly] cul-de-sac [extension of NE 26th Court] whose entire length, measured from 244th Avenue NE, would be approximately 520 feet. The existing private road east of the new cul-de-sac bulb would be abandoned. The remainder of the existing private road serving the lots to the west would be partially overlain by Tract F, a private road tract, and, within Tract A, by an access and turnaround easement.

In Option B (Exhibit 31B), that public street would make a 90° turn to the west and terminate at the west edge of proposed Lot 10 as a temporary stub. As with Option A, the existing private road east of the new street would be abandoned and the remainder of the existing private road serving the lots to the west would be partially overlain by Tract F, a private road tract, and, within Tract A, by an access and turnaround easement. (Exhibit 31B)

In both options, CR Builders suggests that Tract F be subject to a "dedicate on demand" requirement so that it could be converted to public right-of-way should such ever be required in the future. (See Tract F Note on both Exhibits 31A and 31B.) The Department, on the other hand, wants Tract F and the turnaround in Tract A to also

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be encumbered with a public access easement to provide public access to the turnaround in Tract A. (Exhibit 32, p. 12, Recommended Condition 22; and testimony)

(Official notice: Examiner Decision, May 26, 2016, PSUB2015-00104, Finding of Fact 13, ¶¶ 3 - 5)

The Examiner approved Option A (Exhibit 31A):

The Examiner concludes that the likelihood of needing to extend the *Gabrielle's Place* street to the west as a full public street is remote and speculative. Both of the lots to the southwest that could arguably be subdivided and served by such a street could also be subdivided and served by NE 25th Street, an existing public street. Option A leaves open the possibility that a street could be extended westerly, but it provides a much better design than does Option B in the more likely event that such an extension is never required.

Further, Public Works' argument that the proposed turnaround in Tract A at the west end of Tract F could serve as the required turnaround for the end of the public street by simply placing a public use easement over Tract F is not supportable: It would essentially make Tract F a public street without requiring that it be improved to public street standards. Option A provides a fully compliant cul-de-sac bulb at the end of the public street, while leaving the turnaround in Tract A to serve only traffic going to and from Proposed Lots 13 and 14 on the private road.

The Examiner concludes that Option B does not create a "proper projection" of the internal street. Therefore, the Examiner concludes that Option A is preferable.

(Official notice: *Op. cit.*, Conclusion of Law 10)

The Examiner omitted Staff-Recommended Condition 22 from the approved conditions. (Official notice: *Op. cit.*, Conclusion of Law 16.F) Condition 10 of the preliminary approval of *Gabrielle's Place* required Tract F to be a private road. (Official notice: *Op. cit.*, Condition 10) The Examiner did not require removal of the Tract F "dedicate on demand" note on Exhibit 31A. (Official notice: *Op. cit.*, pp. 22 - 26)

Recommended Condition 15 in 25th St. Assemblage states that "[t]he Plat of Gabrielle's Place conveys to the City an easement over the entirety of Tract F for the purpose of future dedication as right-of-way if the City requires the area for roadway extension purposes." (Exhibit 1, p. 15) But even so, if Exhibit 2, Sheet P03 (prepared by a licensed surveyor) correctly depicts Tracts F and A in *Gabrielle's Place*, the rights-of-way (Tract F in *Gabrielle's Place* and ROW 1 in 25th St. Assemblage) will not abut. ROW 1 in 25th St. Assemblage will abut Tract A in *Gabrielle's Place*.

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10. The Traffic Impact Analysis (“TIA”) for 25th St. Assemblage presumed that NE 25th Street would be the primary access and that NE 26th Court through *Gabrielle’s Place/Montecino Estates* would be the secondary vehicular access to 25th St. Assemblage. The TIA includes a schematic depicting a connection between Road A/B and the *Gabrielle’s Place* NE 26th Court cul-de-sac. The TIA projects that the ten new residences (14 lots – 4 existing residences to be removed = 10 net new residences) in 25th St. Assemblage will generate an additional 10 vehicle trips during the P.M. peak traffic hour, of which only one will use the NE 26th Court connection. Sight distance and Level of Service at the 244th Avenue NE/NE 25th Street intersection was found to meet or exceed City standards. The TIA notes that 244th Avenue NE is a minor arterial. (Exhibit 13)
11. Traffic conditions on NE 26th Court and at the 244th Avenue NE/NE 26th Court intersection were thoroughly evaluated during the *Gabrielle’s Place* hearings:

NE 26th Court is perfectly adequate as an access street to serve *Gabrielle’s Place*. It may have been designed and constructed to look like an off-center cul-de-sac, but the record of its creation makes clear that even back in 2005 the possibility that it would serve as access to the property to the south was understood. That the 26th Court Residents were not aware of that fact does not change that fact. That they may have been told something else by real estate salespersons also does not change that fact.

Further, NE 26th Court is physically adequate to serve as access for additional residences. It has adequate sight distance (admittedly minimal, but adequate nevertheless) at its intersection with 244th Avenue NE. It has adequate pavement width. With the sidewalk which will be built along its south side by the developer of *Gabrielle’s Place*, it will have sidewalks along both its sides. It presently handles only about 70 ADT; its classification and design is for a street capable of handling between 300 and 1,000 ADT. The additional 14 lots in *Gabrielle’s Place*, plus the two lots at the west end of the private road outside the subdivision which will now access 244th Avenue NE through the subdivision, will theoretically add another 160 ADT to NE 26th Court. The theoretical total would then be 230 ADT, still well below the design expectation. While the percentage traffic increase will be significant, the absolute increase will not be remarkable. (For example: An increase from 1 ADT to 5 ADT is a 500% increase, but an inconsequential absolute increase.)

(Official notice: Examiner Decision, May 26, 2016, PSUB2015-00104, Finding of Fact 5)

12. The Department of Public Works issued a Certificate of Concurrency (Traffic) for the original 20-lot version of 25th St. Assemblage on July 8, 2017. (Exhibit 14)
13. The record contains evidence that appropriate provisions have been made for open space (Exhibits 1; 2); drainage (Exhibits 1; 2; 20; 24); potable water supply (Exhibits 1; 2; 16); sanitary wastes

(Exhibits 1; 2; 16); parks and recreation (Exhibits 1; 2); playgrounds (Exhibits 1; 2); schools and schoolgrounds (Exhibits 1; 12; 26); and safe walking conditions for children who walk to school (Exhibits 1; 2; 26). The plat design does not require either alleys or other public ways. (Exhibit 2) Transit stops have not been requested.

14. Sammamish first enacted tree retention/preservation regulations in or around 2005. [Ordinance No. O2005-175] Those regulations were contained in former SMC 21A.35.210 - .240. In 2014 the City enacted emergency, interim revisions to those code sections. The interim regulations were in effect from October 14, 2014 to October 14, 2015. [Ordinance Nos. O2014-375 and O2015-390] Those interim regulations were repealed and replaced by Chapter 21A.37 SMC, Development Standards – Trees, effective October 14, 2015. [Ordinance No. O2015-395]

The subject application is vested to the current tree regulations.

15. 147 significant trees ⁶ were catalogued outside of critical area tracts on the subject property. ⁷ (Exhibits 2, Sheets P07 & P08; 18) Current tree retention regulations essentially require that 50% of significant trees located in certain erosion hazard areas be retained regardless of zoning classification or 35% of significant trees outside of critical areas and their buffers be retained in a development on land zoned R-4. [SMC 21A.37.250(1)(c)] Incentives are available for preservation of a greater number of trees in specified circumstances. [SMC 21A.37.270(4)] All significant trees that are removed must be replaced at specified ratios. [SMC 21A.37.280] CR Builders proposes to retain 39 significant trees (58.25 trees with retention credits counted), which equates to 39% retention when earned retention credits are applied. 166 significant trees are proposed to be removed, triggering the replacement requirements of SMC 21A.37.280. 166 replacement trees are proposed to be planted. Most of the retained trees outside of the critical areas are located in Proposed Tracts A and B; most of the replacement trees will be planted in Proposed Tracts A, B, C, and E. (Exhibit 2, Sheets P07 – P10)
16. Sammamish's State Environmental Policy Act ("SEPA") Responsible Official issued a threshold Determination of Nonsignificance ("DNS") for 25th St. Assemblage on June 18, 2018. (Exhibit 11) The DNS was not appealed. (Testimony)
17. CR Builders submitted plans, reports, and analyses in support of its preliminary subdivision application. (Exhibits 2; 5; 10; 12; 13; 15 – 20; 22; 24; 29; 31; 35 – 38)

⁶ A "significant tree," by definition, is "a tree that is in a healthy condition and is a noninvasive species, including those trees defined as a heritage tree and landmark tree, that is: (1) A coniferous tree with a diameter of eight (8) inches or more DBH [Diameter at Breast Height]; or (2) A deciduous tree with a diameter of twelve (12) inches or more DBH." [SMC 21A.15.1333]

⁷ There are over 100 significant trees within the creek buffer. (Exhibit 2, Sheet P07)

18. The Department's Staff Report (Exhibit 1) provides a detailed exposition of facts related to all criteria for preliminary subdivision approval. CR Builders concurred in full in the Findings and Analysis/Conclusions set forth in that report. (Testimony) The record contains no challenge to the content of that report. Therefore, the Findings and Analysis/Conclusions within the Staff Report are incorporated herein as if set forth in full with the following exceptions:
- A. Page 2. CR Builders' address contains a typographical error: "14110" should be "14410." (Exhibit 9, p. 1⁸)
 - B. Page 7, § II.2.9. During the hearing the Department struck the next to last sentence in this paragraph (the "Tract B is located ..." sentence). (Testimony)
 - C. Page 12, § III.F. During the hearing the Department struck the word "Interim" in the title of this section. (Testimony)
 - D. Page 13, § IV. The preliminary subdivision review criteria which the Examiner is required to apply are set forth at SMC 20.10.220.
19. The Department recommends approval of 25th St. Assemblage subject to 31 conditions. (Exhibit 1, pp. 14 - 16)
20. CR Builders has no objection to any of the recommended conditions. (Testimony)
21. The hearing record contains ten written comments from six families and one Indian tribe. (Exhibits 28.1 – 28.7; 32 – 34)

The Muckleshoot Indian Tribe and Bean disagreed with the initial classification of the Evans Creek tributary as Type Ns (non-fish bearing, seasonal). (Exhibits 28.4; 28.5) That concern was resolved when the stream was reclassified as Type F. The Muckleshoot Indian tribe also believes that CR Builders should employ "enhanced treatment methods" for stormwater control because the tributary to Evans Creek and Evans Creek support salmonids. (Exhibits 28.5; 28.7) CR Builders notes that it will be providing Level 2 Conservation Flow Control and Basic Water Quality Treatment as required by the 2016 King County Surface Water Design Manual ("2016 KCSWDM") and the City's Addendum thereto, both adopted by the City. (Exhibit 29, April 10, 2018, Technical memorandum)

Muniz and Kelling/Scannell object to the additional traffic that will be added to NE 25th Street; they would prefer that all traffic be required to use NE 26th Court in *Gabrielle's Place/Montecino Estates*. (Exhibits 28.6; ; 34) DeCoons and Corriveau object to routing any traffic through *Gabrielle's Place/Montecino Estates*. (Exhibit 32; and testimony))

⁸ The typographical error is understandable: CR Builders' representative made the same mistake on Exhibit 5. The Examiner believes that the Exhibit 9 address which was hand-written by CR Builders' hearing spokesperson is the more reliable of the several possible sources.

Kelling/Scannell also bemoan the loss of the “rural” character of NE 25th Street, the street on which they live. They believe that the City is ignoring its comprehensive plan by not protecting the small, “rural” enclave that currently uses NE 25th Street for access. If the development must be approved, they want it conditioned to protect the drip lines of trees on abutting properties that are near common property lines and to avoid as many trees within the NE 25th Street right-of-way as possible. (Exhibits 33; 34; and testimony) There are a number of significant trees within the portion of the NE 25th Street right-of-way between 25th St. Assemblage and 244th Avenue NE. With Public Works’ approval, CR Builders has tried to align its improvement to that section of NE 25th Street so as to avoid disturbing as many of those trees as possible. (Exhibit 38)

Corriveau also disputes CR Builders’ significant tree assessment. (Exhibits 28.2; 28.3) CR Builders’ tree assessment was performed by a licensed arborist. (Exhibit 18) Corriveau submitted no evidence to support her opinion.

A question was asked whether the improvements to NE 25th Street would increase runoff onto neighboring properties. CR Builders and Public Works testified that all runoff must be captured and treated before release. One person asked whether permeable pavement could be used. Public Works said such pavement was not allowed for public streets. (Testimony)

Gordon questioned whether an endangered species evaluation had been conducted on the subject property. (Testimony) CR Builders’ environmental consultant performed an on-site evaluation of the subject property on August 31, 2018. No endangered species were found during that evaluation. (Exhibit 37; and testimony)

22. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

LEGAL FRAMEWORK ⁹

The Examiner is legally required to decide this case within the framework created by the following principles:

Authority

A preliminary subdivision is a Type 3 land use application. [SMC 20.05.020, Exhibit A] A Type 3 land use application requires an open record hearing before the Examiner. The Examiner makes a final decision on the application which is subject to the right of reconsideration and appeal to Superior Court. [SMC 20.05.020, 20.10.240, 20.10.250, and 20.10.260]

The Examiner’s decision may be to grant or deny the application or appeal, or the examiner may grant the application or appeal with such conditions, modifications, and restrictions as

⁹ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

the Examiner finds necessary to make the application or appeal compatible with the environment and carry out applicable state laws and regulations, including Chapter 43.21C RCW and the regulations, policies, objectives, and goals of the interim comprehensive plan or neighborhood plans, the development code, the subdivision code, and other official laws, policies and objectives of the City of Sammamish.

[SMC 20.10.070(2)]

Review Criteria

Section 20.10.200 SMC sets forth requirements applicable to all Examiner Decisions:

When the examiner renders a decision ..., he or she shall make and enter findings of fact and conclusions from the record that support the decision, said findings and conclusions shall set forth and demonstrate the manner in which the decision ... is consistent with, carries out, and helps implement applicable state laws and regulations and the regulations, policies, objectives, and goals of the interim comprehensive plan, the development code, and other official laws, policies, and objectives of the City of Sammamish, and that the recommendation or decision will not be unreasonably incompatible with or detrimental to affected properties and the general public.

Additional review criteria for preliminary subdivisions are set forth at SMC 20.10.220:

When the examiner makes a decision regarding an application for a proposed preliminary plat, the decision shall include additional findings as to whether:

(1) Appropriate provisions are made for the public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and

(2) The public use and interest will be served by the platting of such subdivision and dedication.

Vested Rights

Sammamish has enacted a vested rights provision.

Applications for Type 1, 2, 3 and 4 land use decisions, except those that seek variance from or exception to land use regulations and substantive and procedural SEPA decisions shall be considered under the zoning and other land use control ordinances in effect on the date a complete application is filed meeting all the requirements of this chapter. The department's issuance of a notice of complete application as provided in this chapter, or the failure of the

department to provide such a notice as provided in this chapter, shall cause an application to be conclusively deemed to be vested as provided herein.

[SMC 20.05.070(1)] Therefore, this application is vested to the development regulations as they existed on August 2, 2017.

Standard of Review

The standard of review is preponderance of the evidence. The applicant has the burden of proof. [City of Sammamish Hearing Examiner Rule of Procedure 316(a)]

Scope of Consideration

The Examiner has considered: all of the evidence and testimony; applicable adopted laws, ordinances, plans, and policies; and the pleadings, positions, and arguments of the parties of record.

CONCLUSIONS OF LAW

1. Section 20.10.200 SMC requires the Examiner to consider a number of items, including “the interim comprehensive plan”. The Examiner’s ability to use the comprehensive plan in project review is constrained by state law which states that the comprehensive plan is applicable only where specific development regulations have not been adopted: “The review of a proposed project’s consistency with applicable development regulations or, in the absence of applicable regulations the adopted comprehensive plan” [RCW 36.70B.030(1)]

The state Supreme Court addressed that provision in *Citizens v. Mount Vernon* [133 Wn.2d 861, 947 P.2d 1208 (1997), *reconsideration denied*] in which it ruled that “[RCW 36.70B.030(1)] suggests ... a comprehensive plan can be used to make a specific land use decision. Our cases hold otherwise.” [at 873]

Since a comprehensive plan is a guide and not a document designed for making specific land use decisions, conflicts surrounding the appropriate use are resolved in favor of the more specific regulations, usually zoning regulations. A specific zoning ordinance will prevail over an inconsistent comprehensive plan. If a comprehensive plan prohibits a particular use but the zoning code permits it, the use would be permitted. These rules require that conflicts between a general comprehensive plan and a specific zoning code be resolved in the zoning code’s favor.

[*Mount Vernon* at 873-74, citations omitted] The City has adopted zoning, environmental protection, street standards, and other development regulations to implement its comprehensive plan. On topics where the City has adopted development regulations, comprehensive plan policies addressing the same subject can no longer be considered in reviewing a development application. Essentially, the concept in Washington State is that a comprehensive plan is a broad-brush policy document whose

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primary purpose is to guide the formulation of development regulations. It is not a regulatory tool *per se*.

2. The Examiner understands the obviously sincere feelings and concerns of the current residents of NE 25th Street who participated in the development review process. Their area is a neighborhood, albeit a quite small neighborhood. And their little neighborhood is different from the newer suburban development which surrounds it and which, as they see it, is encroaching on it. But the reality is that their little neighborhood is a remnant of a former time and regulatory system. The City Council has zoned the entire area, including their little neighborhood, for residential development at up to four dwelling units per acre. The density of their little neighborhood is most likely about one-fourth of that target density. They live in an anachronism in a developing suburban area. As such, development of surrounding properties to a density consistent with the adopted zoning will have to be approved.
3. A brief word about preservation of trees within the NE 25th Street right-of-way. Rights-of-way are established to serve a public purpose. The purpose for street rights-of-way is current or future construction of public streets. If construction of a public street necessitates removal of trees from within a right-of-way, such removal should be expected. The safety and efficiency of the public street system would take precedence over preservation of trees within that right-of-way. In the present case, CR Builders is required by the 2016 PWS to provide only an interim improvement to the substandard condition of NE 25th Street. It appears that CR Builders and Public Works have been able to configure that temporary improvement so as to save many of the existing trees within the right-of-way. But the day will likely come when improvement to full City standard is necessary. At that time, the trees within the right-of-way may have to go.
4. Based upon all the evidence in the record, the Examiner concludes that 25th St. Assemblage meets the considerations within SMC 20.10.200. All evidence demonstrates compliance with Comprehensive Plan policies, to the extent they can be considered, and zoning code, subdivision code, and Environmentally Sensitive Areas regulations.
5. The proposed vehicular connection through *Gabrielle's Place/Montecino Estates* presents an interesting dilemma. City staff and CR Builders have apparently operated on the premise that a public connection across Tract F and over the easement on Tract A in *Gabrielle's Place* is available. But, when the Examiner reviewed his *Gabrielle's Place* Decision (after the hearing) he discovered that he had approved Tract F/Tract A easement as a private road, not a public right-of-way and the "dedicate-on-demand" note apparently pertains only to Tract F.

As noted in the Findings of Fact, it appears that *Gabrielle's Place* was recorded subject to a "dedicate-on-demand" note applying to Tract F. What is important here is that proposed public Road A/B may not provide a connection to a public right-of-way since it abuts only Tract A according to CR Builders' surveyor.

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The Examiner will not require redesign of the proposed plat for either or both of two reasons. First, it may be that Tract F and the Tract A easement in *Gabrielle's Place* are actually public rights-of-way or that (somehow) both are subject to a "dedicate-on-demand" requirement. If they are, then there should be a connection to that abutting right-of-way. Second, even if they are not presently public right-of-way, the 2016 PWS require connectivity. [2016 PWS 7.5] Redevelopment at some future time could ultimately change their status to a public right-of-way.

The Examiner will impose a condition to address these alternatives.

6. Gordon and Corriveau have concerns about the effect of 25th Street Assemblage on their present sewage disposal and water supply systems. Both want the opportunity to connect to the public systems that CR Builders will install. (Exhibit 28.1; and testimony) Sewer and water system routing is within the purview of the agency which provides those services, in this case Sammamish Plateau Water ("SPWater"). Gordon and Corriveau need to continue their discussions with CR Builders and also talk with SPWater.
7. Given all the evidence in the record, the Examiner concludes that 25th St. Assemblage complies with the review criteria of SMC 20.10.220(1). The proposed subdivision allows development at the density expected under the Comprehensive Plan, does not thwart future development of surrounding properties, and makes appropriate provision for all items listed in that code section.
8. Given all the evidence in the record, the Examiner concludes that 25th St. Assemblage will serve the public use and interest and will thus comply with the review criteria of SMC 20.10.220(2).
9. The recommended conditions of approval as set forth in Exhibit 1 are reasonable, supported by the evidence, and capable of accomplishment with the following changes:
 - A. No development activity may occur until the subject property has been legally created. Until the anticipated BLA is approved and recorded, the property for which subdivision approval is sought will not legally exist. And until it exists as a legal development parcel, development cannot occur. A new condition will be added to require completion of the BLA before any development activity occurs.
 - B. Recommended Conditions 3 and 15. These conditions as proposed would require dedication of Tract F in *Gabrielle's Place* to provide a public right-of-way link between NE 26th Court in *Montecino Estates/Gabrielle's Place* and Road A/B in 25th Street Assemblage. But unless Tract F in *Gabrielle's Place* as recorded was longer than as approved during the preliminary subdivision process (and longer than depicted on CR Builders' submitted plans for 25th St. Assemblage), Tract F, even if dedicated, would not provide the envisioned public right-of-way connection: Tract F ends well to the east of the eastern end of the Road A/B right-of-way. The Examiner will revise these conditions.


- C. Recommended Conditions 12 and 13. The Examiner understands from hearing testimony that these recommended conditions were taken verbatim from a recommendation made by a special purpose district. Unfortunately, the wording of Recommended Condition 12 is not particularly clear and Recommended Condition 13 essentially repeats Recommended Condition 12. While City staff may not feel comfortable revising text proposed by a special purpose district, the Examiner has no such hesitation. Conditions of approval must be clear, understandable, and non-duplicative. When they aren't, they must be revised. The Examiner will revise Recommended Condition 12 and delete Recommended Condition 13.
- D. Recommended Conditions 25 and 30. Both of these conditions reference the 2016 KCSWDM. Storm water control regulations are generally not subject to vested rights. The reference in Recommended Condition 25 is open ended; the reference in Recommended Condition 30 includes a cut-off date (which the Examiner presumes relates to the City's NPDES permit). No change is needed to Recommended Condition 30; Recommended Condition 25 will be changed to simply refer to the "applicable" KCSWDM.
- E. A few minor, non-substantive structure, grammar, and/or punctuation revisions to Recommended Conditions 1, 3 - 5, 7, 13, 15, 16, and 23 - 30 will improve parallel construction, clarity, and flow within the conditions. Such changes will be made.

10. Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

DECISION

Based upon the preceding Findings of Fact and Conclusions of Law, and the testimony and evidence submitted at the open record hearing, the Examiner **GRANTS** preliminary subdivision approval for 25th Street Assemblage **SUBJECT TO THE ATTACHED CONDITIONS**.

Decision issued September 17, 2018.



John E. Galt
Hearing Examiner

HEARING PARTICIPANTS ¹⁰

¹⁰ The official Parties of Record register is maintained by the City's Hearing Clerk.

Ryan Harriman
Scott Gordon
Wendy Kelling
Stephanie Sullivan
Kolten Kosters

Gina Estep
John Scannell
Jill Corriveau
Holli Headrin

NOTICE of RIGHT of RECONSIDERATION

This Decision is final subject to the right of any party of record to file with the Examiner (in care of the City of Sammamish, ATTN: Lita Hachey, 801 228th Avenue SE, Sammamish, WA 98075) a written request for reconsideration within 10 calendar days following the issuance of this Decision in accordance with the procedures of SMC 20.10.260 and Hearing Examiner Rule of Procedure 504. Any request for reconsideration shall specify the error which forms the basis of the request. See SMC 20.10.260 and Hearing Examiner Rule of Procedure 504 for additional information and requirements regarding reconsideration.

A request for reconsideration is not a prerequisite to judicial review of this Decision. [SMC 20.10.260(3)]

NOTICE of RIGHT of JUDICIAL REVIEW

This Decision is final and conclusive subject to the right of review in Superior Court in accordance with the procedures of Chapter 36.70C RCW, the Land Use Petition Act. See Chapter 36.70C RCW and SMC 20.10.250 for additional information and requirements regarding judicial review.

The following statement is provided pursuant to RCW 36.70B.130: "Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation."

CONDITIONS OF APPROVAL
25TH ST. ASSEMBLAGE
PSUB2017-00599

This Preliminary Subdivision is subject to compliance with all applicable provisions, requirements, and standards of the Sammamish Municipal Code, standards adopted pursuant thereto, and the following special conditions:

General Conditions:

1. Exhibit 2 is the approved preliminary plat (and supporting plans). Revisions to approved preliminary subdivisions are subject to the provisions of SMC 19A.12.040.
2. Prior to approval of any site development permits, site development work, and/or recordation of the final plat, whichever comes first, the subject property shall have been legally created by approval and recordation of an appropriate BLA between Parcel 222506-9043 and Parcel 222506-9074.
3. The Plator or subsequent owner(s) shall comply with the payment of street impact fees, impact fees for park and recreational facilities, and school impact fees for 10 new net lots in accordance with SMC Chapters 14A.15, 14A.20, and 21A.105, respectively, prior to building permit issuance.
4. The roadway intersection of Road A/B as depicted on the preliminary plat between *Gabrielle's Place* and *NE 25th St. Assemblage* shall provide neighborhood connectivity through an appropriate roadway connection, if the abutting private road in *Gabrielle's Place* is a dedicated right-of-way or is subject to a dedicate-on-demand provision. If neither of those conditions applies, then construction of Road A/B shall include bollards or the equivalent along the north edge of the road to prevent unauthorized access to a private road. Final design shall be reviewed through the Site Development Permit in accordance with the 2016 Public Works Standards (2016 PWS).
5. NE 25th Street is classified as a local street with existing right-of-way of 50-feet. Pursuant to 2016 PWS Table 9.2, right-of-way (ROW) dedication and frontage improvements on NE 25th Street along the project frontage within the plat boundary are required.
6. The roadway connection on NE 25th Street east of the proposed project shall be improved to provide at a minimum a 20-foot wide paved roadway (consistent with two travel lanes to serve for ingress and egress) pursuant to 2016 PWS 7.5 and 7.6.
7. The Plator shall work with the Lake Washington School District to determine the location of the school bus stop. The Plator shall provide a safe walking route to school bus stop. The

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Plattor shall provide the City with documentation from the School District authorizing the bus stop location change.

8. Drainage plans, Technical Information Reports, and analysis shall comply with the *2016 King County Surface Water Design Manual* (2016 KCSWDM), the City of Sammamish Addendum to the 2016 KCSWDM, the City of Sammamish *Stormwater Management Comprehensive Plan*, the Evans Creek Basin Plan, and the Bear-Evans Watershed Temperature, Dissolved Oxygen and Fecal Coliform Bacteria Total Maximum Daily Load Water Quality Implementation Plan.
9. Illumination shall be provided in the plat local roads consistent with the City's standards for average foot candles and uniformity for a local road. Luminaires shall be full cut-off. Pole type and style shall be approved by Public Works.
10. All fire hydrants required to meet the code minimum fire flow for a structure shall be within the maximum distance allowed. For example, if two (2) fire hydrants are needed to meet the fire flow requirement of 1750 GPM for a home, both hydrants shall be located within 500 feet of the back wall of the home, as the Fire Code requires. The code does not allow one hydrant to be within 600 feet of the home and the other hydrant needed to meet fire flow to be located 600 feet from the first hydrant. Both hydrants needed shall be within the 600 foot distance. Unless this code requirement can be met, all homes larger than 3,600 square feet that cannot meet fire flow requirements shall have a fire sprinkler system installed.
11. Based on the fire flow calculations submitted to Eastside Fire and Rescue by the water purveyor which state the flow is 1000 GPM or more, the homes are limited to 3,600 square feet in size (this includes an attached garage) unless an alternative means of fire control is implemented. The installation of a fire sprinkler system is one alternative to not meeting minimum fire flow requirements for a large home and would allow construction of homes over 3,600 square feet.
12. Approved fire apparatus access roads shall be provided. Dead end roads over 150-feet long shall be provided with an approved fire apparatus turn around. (Please contact the Fire Prevention Bureau for more details (425) 313-3324 or 313-3322.)
13. An NFPA 13D fire sprinkler system will be required in any residence on a lot served by an access road exceeding 150 feet in length which lacks an approved fire department turnaround.
14. Private driveways or Tract roads shall not be used when determining the maximum distance of 150-feet from an approved road.

Prior to or Concurrent with Final Plat:

15. The Plat of *Gabrielle's Place* shall convey to the City an easement over the entirety of Tract F for the purpose of future dedication as right-of-way if the City requires the area for roadway extension purposes. The Platator shall initiate the process to have Tract F in *Gabrielle's Place* dedicated as public right-of-way if such dedication would overlap the Road A/B dedication in 25th St. Assemblage.
16. All frontage improvements and all offsite improvements shall be substantially completed, which includes storm water facilities operational and first base lift of asphalt. This includes but is not limited to the 20-foot paved roadway (1st lift asphalt only) along NE 25th Street between the new development and 244th Avenue NE. The balance of improvements not completed can be bonded for as allowed by city code.
17. Driveway aprons shall be completed or bonded for prior to final plat. Any joint use driveway shall be bonded for or constructed under the Site Development Permit.
18. Maintenance instructions and responsibility for low impact development flow control best management practices (LID BMPs) used in the plat shall be included in the Homeowners Association Covenants, Conditions, and Restrictions. When a Homeowner's Association is not created, maintenance of LID BMPs shall be a responsibility shared by the owners of the lots within the plat or specified to an individual homeowner. A declaration of covenant and grant of easement is required pursuant to the 2016 King County Surface Water Design Manual. Under no circumstances shall the City be responsible for maintenance of the plat or building permit required LID BMPs.
19. Signage for low impact development flow control best management practices (LID BMPs) shall be approved and installed.
20. Illumination shall be fully installed or bonded as approved by the City Engineer.

Conditions to appear on the face of the final plat (italicized words verbatim):

21. Covenant and easement language pertaining to individual lot and tracts with flow control BMPs shall be shown on the face of the final plat. Public Works shall approve the specific language prior to final plat.
22. Unless located within a recreation tract and public easements provided, all Surface Water Management Facilities required for this subdivision shall be contained within a separate tract of land and shall be dedicated to the City of Sammamish for inspection, maintenance, operation, repair, and replacement. Language to this effect shall be shown on the face of the final plat.

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23. *Maintenance of all landscape strips along the plat roads shall be the responsibility of the Homeowners Association or adjacent property owners. Under no circumstances shall the City bear any maintenance responsibilities for landscaping strips created by the plat.*
24. *Maintenance of landscaping within Tract B, including above the stormwater vault, shall be the responsibility of the Homeowners Association or jointly shared by the owners of the development.*
25. *Individual lot flow control BMP's in accordance with the applicable King County Surface Water Design Manual shall be provided with each single family residential building permit unless otherwise incorporated into the subdivision site development plans.*
26. *Maintenance of illumination along all local and private roads shall be the responsibility of the Homeowners Association or jointly shared by the owners of the development.*
27. *Maintenance of all low impact development flow control best management practices (LID BMPs) shall be the responsibility of the Homeowners Association or shared by the plat owners when they are located on commonly owned tracts. Where low impact development features are installed on individual lots, maintenance shall be the responsibility of the owner of the individual lots on which they have been installed. Under no circumstances shall the City be responsible for maintenance of the plat or building permit required LID BMPs.*
28. *The City of Sammamish is granted a public easement to inspect all low impact development flow control best management practices (LID BMPs) located on each individual lot or on commonly shared tracts in the plat.*
29. *The Homeowners Association or jointly shared by individual lot owners of the plat shall be responsible for maintenance of all recreation elements located on the plat, including, but not limited to, landscaping around stormwater facilities, trails, fences, and signage.*
30. *All building permits that start construction prior to 1/1/2022 shall be subject to the 2016 King County Surface Water Design Manual Appendix C to determine the best management practices for all surface water runoff. All connections of roof drains shall be constructed and approved prior to final building inspection approval.*

Prior to City Acceptance of Improvements:

31. *Prior to acceptance into the Maintenance and Defect period, project close-out documents including the final acceptance construction punch list, as-builts, and final corrected Technical Information Report shall be submitted to Public Works for approval.*